

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 27, 2018

Return Receipt Requested

Certified Mail #: (b) (6) Privacy

In Reply Refer to:

EPA No: 09D-17-R9

Nancy Kerry, City Manager
City of South Lake Tahoe
1901 Airport Road
South Lake Tahoe, CA 96150

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Certified Mail #: (b) (6) Privacy

Ms. Karen Bender, Supervisor
El Dorado County
South Lake Tahoe Office
924 B Emerald Bay Rd.
South Lake Tahoe, CA 96150

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Certified Mail #: (b) (6) Privacy

Mr. Doug Smith, Assistant Executive Officer
State of California
Regional Water Resources Control Board
South Lake Tahoe Office
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

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Certified Mail #: (b) (6) Privacy

Dave Johnston, Air Quality Control Officer
El Dorado County Air Quality Management District
345 Fair Lane, T-1
Placerville, CA 95667

Return Receipt Requested

Certified Mail #: (b) (6) Privacy

Ms. Joanne Marchetta, Executive Director
Tahoe Regional Planning Agency
128 Market Street
Stateline, NV 89449

Ms. Nancy Kerry
Ms. Karen Bender
Mr. Doug Smith
Mr. Dave Johnston
Ms. Joanne Marchetta

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Re: Rejection and Closure of Administrative Complaint

Dear Ms. Kerry, Ms. Bender, Mr. Smith, Mr. Johnston and Ms. Marchetta:

On February 6, 2017, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) received a complaint alleging that the City of South Lake Tahoe (the City), El Dorado County Air Quality Management District, California Water Resources Control Board (CWRCB), and the Tahoe Regional Planning Agency (TRPA) has violated Section 504 of the Rehabilitation Act of 1973 (Section 504) and the EPA's nondiscrimination regulation (see 40 C.F.R. Part 7) on the basis of disability by allowing the Tahoe Asphalt plant to release airborne toxins that created an adverse health impact. Complainant states that the above-mentioned entities failed to investigate and protect him and others in the community with immunodeficiency concerns from an asphalt plant in the neighborhood that is allegedly releasing airborne toxins. After careful review, ECRCO has concluded that an investigation in this case is not justified in light of the facts presented. Accordingly, this matter is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

In general, ECRCO will accept, reject or refer a complaint after considering the four jurisdictional factors described above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation.¹

The Complainant is an individual with a disability who has resided in South Lake Tahoe since 2002. His complaint alleged that in or around August 2016, pursuant to a Memorandum of Understanding between the TRPA and the City of South Lake Tahoe, the City reviewed and approved a minor permit for a project to modernize the Tahoe Asphalt plant by using new

¹ *See* ECRCO Case Resolution Manual, Section 2.6, pp. 12-13, *available at* https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

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technology to reduce air emissions.² Prior to the project's approval, public meetings were held and there was a community meeting sponsored by Tahoe Asphalt.

The Complainant alleged that the Tahoe Asphalt project has adversely affected him and other individuals with disabilities in the local community by releasing "harmful toxins into the air". However, during subsequent interviews, the Complainant was unable to establish any causal relationship between his disabilities and the asphalt plant. The Complainant acknowledged that the plant was not the cause of most of his disabilities. Although he feels that he experienced dental loss and spine deterioration as a result of plant activities, he admitted that his doctors declined to confirm any such causal relationship. Complainant makes a generalized statement of harm based on a claim that "health professionals and medical literature" draw a connection generally between poor air quality and respiratory issues, but such a generalized statement is insufficient to establish the type of injury in fact necessary for a viable claim of discrimination. He made no specific allegations regarding the impact of the asphalt project on any other individuals with disabilities.

Additionally, the Complainant raised concerns about finding petroleum in the water, the "washing out" of trucks from the asphalt plant, and improper discharge of asphalt into storm sewers. However, during subsequent conversations with ECRCO he was unable to identify when he observed such occurrences. ECRCO confirmed that the regional EPA Office has responded to complaints from the Complainant and has indicated that the recipients named in the complaint have responded appropriately to him as well.

After a careful review, ECRCO has determined that it will not accept this complaint for investigation. Regarding allegations against the City of South Lake Tahoe and the El Dorado County Air Quality Management District, ECRCO lacks jurisdiction over these entities, because they are not applicants for, nor recipients of, EPA financial assistance.

The TRPA and CWRCB were recipients of EPA financial assistance at the time the complaint was filed, however, their actions as alleged by complainant do not warrant an investigation. The complaint allegations are speculative and not sufficiently grounded in fact for ECRCO to infer that discrimination is occurring. Complainant makes a generalized statement of harm without any demonstration of a specific harm arising from TRPA or CWRCB's actions, and therefore did not allege facts which, if true, would violate the EPA's nondiscrimination regulation. The subject permit was approved not by the TRPA or the CWRCB, but by the City of South Lake Tahoe, which as discussed above is not subject to ECRCO jurisdiction because it is not a recipient of EPA funds. Moreover, in this instance, ECRCO exercises its discretion not to open an investigation because the action at issue was to approve a permit that would modernize the asphalt plant and *reduce* air emissions. Finally, Complainant's concerns about finding petroleum

² <https://www.laketahoenews.net/2018/03/residents-regulatory-agencies-disagree-whether-south-lake-tahoe-asphalt-plant-good-neighbor/>

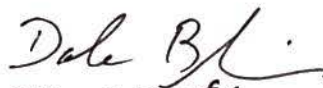
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in the water, the "washing out" of trucks from the asphalt plant, and improper discharge of asphalt into storm sewers appear to be untimely because he failed to identify an act that occurred within 180 days of his filing the complaint. Accordingly, this matter is closed as of the date of this letter.

If you have any questions about this letter, please contact Dale Rhines, Deputy Director, at (202) 564-4174, by e-mail at rhines.dale@epa.gov or by mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office, Mail Code 2310A, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale B." with a stylized flourish at the end.

Lilian S. Dorka^{for}

Director

External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Deputy Regional Administrator
Deputy Civil Rights Official
US. EPA Region 9